

(4)
No. 84-1580

Supreme Court, U.S.

FILED

AUG 2 1985

JOSEPH E. SPANIOLO, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH INADI

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED APRIL 4, 1985
CERTIORARI GRANTED MAY 28, 1985

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TABLE OF CONTENTS *

	Page
District court docket entries	1
Court of appeals docket entries	9
Indictment	11
Oct. 25, 1983 Tr.	15
Oct. 26, 1983 Tr.	16
Oct. 28, 1983 Tr.	19
Oct. 31, 1983 Tr.	21
Order Allowing Certiorari	23

* The opinion of the court of appeals is printed in the appendix to the petition for a writ of certiorari and has not been reproduced.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 83-00108

UNITED STATES OF AMERICA

v.

JOSEPH INADI

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1983		
Mar. 23	1	True Bill.
" 23	2	MOTION & ORDER FOR BENCH WARRANT, FILED. Warrant Exit. Bail to be entered in the amount of \$50,000.00 with surety.
" 23	3	ORDER THAT DOCKET PAPERS ARE SEALED & IMPOUNDED, FILED. PBS
" 23	4	Letter unimpounding Indictment, filed.
" 24	5	Bail Status Sheet setting bail in sum of \$50,000—O.R., filed. PBS
" 24	6	Appearance of M. Maquigan, Esq. for deft., filed.
" 24	—	Bond of deft. in sum of \$50,000—O.R., filed.
" 31	7	PLEA: NOT GUILTY to Cts. 1 thru 5. Ten days to file motions. Trial set for 5-23-83, filed. WFH

DATE	NR.	PROCEEDINGS
1983		
Apr. 11	8	STIPULATION AND ORDER THAT TIME FOR FILING OF DEFT'S PRETRIAL MOTIONS IS EXTENDED UNTIL 4-25-83, ETC., FILED. RJB 4-12-83 entered & copies mailed.
" 12	9	Warrant returned "on 3-24-82 executed" and filed.
" 25	10	MOTION OF DEFT. FOR DISCLOSURE OF ELECTRONIC SURVEILLANCE AND MEMO, FILED.
" 25	11	MOTION OF DEFT. FOR A BILL OF PARTICULARS AND MEMO, FILED.
" 25	12	MOTION OF DEFT. TO DISCLOSE INFORMATION REGARDING PROCEEDINGS BEFORE OR ANCILLARY TO THE GRAND JURY AND MEMO, FILED.
" 25	13	MOTION OF DEFT. TO SUPPRESS EVIDENCE, REQUEST FOR NOTICE OF INTENT TO USE EVIDENCE, AND MOTION FOR RETURN OF PROPERTY AND MEMO, FILED.
" 25	14	MOTION OF DEFT. TO DISMISS INDICTMENT AND MEMO, FILED.
May 3	15	ORDER THAT EXCLUDABLE TIME BE COMPUTED FROM DATE OF FILING OF MOTION OF DEFT. TO DISCLOSE INFORMATION, ET AL, FILED. CLK. 5-3-83 entered & copies mailed
" 9	16	Govt's answer to motion to dismiss indictment and memo, filed.

DATE	NR.	PROCEEDINGS
1983		
" 9	17	Govt's answer to motion to suppress evidence, request for notice of intent to use evidence, and motion for return of property and memo, filed.
" 9	18	Govt's answer to motion for a bill of particulars and memo, filed.
" 9	19	Govt's answer to motion to disclose information regarding proceedings before or ancillary to the Grand Jury and memo, filed.
" 11	20	Govt's answer to motion for disclosure of electronic surveillance, affidavit, inventory and memo, filed.
" 18	21	MOTION OF DEFT. FOR FURTHER ELECTRONIC SURVEILLANCE DISCOVERY, FILED.
" 18	22	MOTION OF DEFT. FOR TRIAL CONTINUANCE, FILED.
" 23	23	ORDER THAT CASE IS REASSIGNED FROM THE CALENDAR OF THE HON. RAYMOND J. BRODERICK TO THE CALENDAR OF THE HON. JAMES T. GILES, FILED. 5-23-83 entered & copies mailed. AL
Jun 3	24	ORDER THAT A HEARING ON ALL OUTSTANDING MOTIONS IS SET DOWN FOR 7-1-83, FILED. 6-3-83 entered & copies mailed. CLK.
" 20	25	MOTION OF GOVT. FOR A HEARING PURSUANT TO PROVISIONS OF 28:455(e) AND MEMO, FILED.
Jul 1	26	Govt's response to motion for further electronic surveillance discovery, filed.

DATE	NR.	PROCEEDINGS
1983		
" 6	27	Hearing of 7-5-83 re recusal motion of the Govt.—Court will transfer case to another Judge of this Court, filed.
" 11	28	ORDER THAT CASE IS REASSIGNED FROM THE CALENDAR OF THE HON. JAMES T. GILES TO THE CALENDAR OF THE HON. CLIFFORD SCOTT GREEN, FILED. 7-11-83 entered & copies mailed AL
" 14	29	ORDER THAT A MOTION AND STATUS CONFERENCE IS SCHEDULED FOR 7-19-83, FILED. 7-15-83 entered & copies mailed CG
Jul 21	30	Letter to Judge Green from H. Maquigan, Esq. re request for a continuance of conference scheduled for 7-19-83, filed.
" 21	31	ORDER THAT MOTION AND STATUS CONFERENCE IS CONTINUED UNTIL FURTHER NOTICE AT REQUEST OF HOLLY MAQUIGAN, ESQ., ETC., FILED. 7-22-83 entered & copies mailed
" 27	32	ORDER THAT A MOTION AND STATUS CONFERENCE IS SCHEDULED FOR 8-29-83, FILED. 7-27-83 entered & copies mailed. CG
Aug. 23	33	MOTION & ORDER THAT THE OFFICE OF THE PROSECUTOR FOR CAPE MAY COUNTY, NEW JERSEY, DELIVER TO S.A. ELLIS HERSHOWITZ OF THE D.E.A. THE ORIGINAL TAPES RESULTING FROM THE COURT-ORDERED ELECTRONIC SURVEILLANCE ON THE TELEPHONES OF JOHN LAZARO, FILED. CG 8/23/83 entered & copies mailed.

DATE	NR.	PROCEEDINGS
1983		
" 23	34	DEFT'S MOTION TO COMPEL PRE-TRIAL DISCLOSURE OF DISCOVERY MATERIALS, MEMORANDUM, CERTIFICATE OF SERVICE, FILED.
" 30	35	Argument of 8-29-83 re motion of deft. for bill of particulars—Granted in part; motion of deft. to disclose information regarding proceedings before or ancillary to the Grand Jury—C.A.V.; motion of deft. to dismiss indictment—C.A.V.; motion of deft. for further electronic surveillance—C.A.V.; motion of deft. to suppress evidence, request for notice of intent to use evidence and motion for return of property—Withdrawn in part—C.A.V., filed.
" 30	36	ORDER THAT THE 39 REELS OF SEALED TAPES GENERALLY REFERRED TO AS THE CAPE MAY WIRE OR WIRE TAPS "WT 1" AND "WT 2" MAY BE UNSEALED AND PLAYED FOR THE BENEFIT OF THE DEFT. AND THE GOVT., FILED. 8-30-83 entered & copies mailed. CG
" 31	37	MOTION OF GOVT. TO ADMIT TAPE RECORDINGS, FILED.
Sep. 20	38	Transcript of 8-29-83, filed.
" 28	39	PETITION AND ORDER THAT THE SUPT. OF LEESBURG STATE PRISON, LEESBURG, N.J. AND THE U.S. MARSHAL FOR THE EAST. DIST. OF PA. PRODUCE G. POLLACCO AT THE U.S. MARSHAL'S OFFICE ON OCT. 4, 5, 6 & 7, 1983, FILED. CG
Sep. 29	40	Letter Memo to Judge Green from H. Maguigan, Esq. re points and authorities, filed.

DATE	NR.	PROCEEDINGS
1983		
" 29	41	Letter to Judge Green from J.K. Damirgian, AUSA re response to letter memo of deft., filed.
" 29	42	Affidavit of J. K. Damirgian, AUSA, filed.
" 29	(37)	ORDER OF COURT RE: Govt. Exhibits T-1 thru T-6 and transcripts, filed. 9-30-83 entered & copies mailed. CG
" 29	43	REPORT OF SPEEDY TRIAL ACT DELAY—ON 8-29-83 HEARING ON DEFT'S MOTIONS TO DISCLOSE INFORMATION, ET AL—C.A.V., FILED. CG 9-30-83 entered & copies mailed.
" 29	44	ORDER DENYING MOTION OF DEFT. TO COMPEL DISCOVERY; DENYING MOTION FOR FURTHER ELECTRONIC SURVEILLANCE DISCOVERY AND FOR "7-AGENCY CHECK", ETC.; TRIAL SCHEDULED TO COMMENCE ON 10-6-83, FILED. 9-30-83 entered & copies mailed. CG
Oct. 7	45	TRIAL OF 10/6/83-Counsel requests trial to be continued to 10/24/83, due to unavailability of Ms. Maguigan; Deft. sworn waives his rights f/speedy trial; Court GRANTS request to reschedule trial to 10/24/83, filed.
" 7	46	ORDER THAT THE ACTION CANNOT PROCEED TO TRIAL AND MUST BE CONTINUED BECAUSE OF THE UNAVAILABILITY OF COUNSEL FOR DEFT., TRIAL CONTINUED BECAUSE OF THE UNAVAILABILITY OF COUNSEL FOR DEFT., TRIAL CONTINUED TO 10/24/83, ETC., FILED. CG 10/11/83 entered & copies mailed.

DATE	NR.	PROCEEDINGS
1983		
Oct. 18	47	SUPPL. MOTION OF DEFT. FOR A BILL OF PARTICULARS AND MEMO, FILED.
" 24	48	PETITION AND ORDER THAT THE SUPT. OF THE LEESBURG STATE PRISON LEESBURG, NEW JERSEY AND THE U.S. MARSHAL FOR THE EAST. DIST. OF PA. PRODUCE G. POLLACCO AT THE U.S. MARSHAL'S OFFICE ON OCT. 25, 26 & 27, 1983, FILED.
" 25	49	Jury called and sworn. TRIAL—witness sworn, filed.
" 27	50	Trial of 10-26-83 resumes, filed.
" 27	51	Deft's requested points for charge, filed.
" 31	52	Trial of 10-28-83 resumes, filed.
Nov. 1	53	Waiver of presence of court stenographer at drawing of jury panel members, filed.
" 1	54	Trial of 10-31-83 resumes, filed.
" 1	55	Govt's requested points for charge, filed.
" 1	56	Order to furnish beverages for jurors, filed.
" 1	57	Order to furnish lunch for jurors, filed.
" 3	58	Trial of 11-1-83 resumes, filed.
" 3	59	Trial of 11-2-83 resumes. VERDICT: GUILTY to Cts. 1 thru 5. Sentence set for 11-30-83, filed.
" 2	60	ORDER SEALING EXHIBIT D-4 WHICH IS PART OF EVIDENCE PRODUCED IN TRIAL OF ACTION, ETC., FILED. CG

DATE	NR.	PROCEEDINGS
1983		
Dec. 1	61	SENTENCE OF 11-30-83: Cts. 1 thru 5—Impr. 3 yrs. con. and become eligible for parole under 18:4205 (b) (2) immediately and S.P. 7 yrs. as to Ct. 5, filed.
" 1	62	JUDGMENT AND COMMITMENT ORDER, FILED. 12-1-83 entered & copies mailed
" 7	63	Deft's Notice of Appeal, filed. (copies to: USA, USCA, Judge Green) (USCA #83-1882)
" 7	64	Copy of Clerk's Notice to USCA
" 16	65	Copy of Appellant's Transcript Purchase Order, filed.
1984		
Jan. 18	66	Copy of order of USCA granting an extension of 23 business days for filing of transcript, filed.
Feb. 15	67	Transcript of 10-24-83, filed.
" 15	68	Transcript of 10-25-83, filed.
" 15	69	Transcript of 10-28-83, filed.
" 15	70	Transcript of 10-31-83, filed.
" 15	71	Transcript of 1-1-83, filed.
" 17	72	Transcript of 10-26-83, filed.
" 21	73	Transcript of 11-2-83, filed. CG
" 22	—	RECORD COMPLETE FOR PURPOSES OF APPEAL
" 27	74	Transcript of 11-30-83, filed.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1882

JOSEPH INADI, APPELLANT

v.

UNITED STATES OF AMERICA

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1984	
May 7	Mot by applee for leave to file an appendix, w/serv, filed.
May 15	Order (Clerk) granting above mot, w/filing as of the date of this order, filed.
June 28	Ltr dtd 6/28/84 from Jeanne K. Damirgian, Esq. counsel for applee, w/encl., copy of page 20a of applee's brief, recd. at the direction of the Crt.
June 25	Clk's ltr to counsel for applee, written at the direction of the Crt, advising there appears to be a gap between pages 20 and 21 of the govt' brief in this case and requesting applee to supply 10 copies of the missing material promptly.
July 17	Mot by applee to file second supplemental appendix, w/serv, filed.
Nov. 26	Motion by applee for extension of time within which to file the pet. for reh'g. to and including 12/27/84 w/serv. filed. (sa)

DATE	FILINGS—PROCEEDINGS
1985	
Nov. 27	Order Amending Opinion (Adams, <i>Higginbotham</i> & Van Dusen, CJS), filed. (ch)
Dec. 4	Order (Higginbotham, C.J.) granting mot. by apee for ext. of time to file pet. for reh. to and including 12-27-84, filed. (ml)
1985	
Jan. 9	Order (Higginbotham, C.J.) directing that attorneys for appt. are to file an answer to the pet. for reh. w/in 15 days, filed. (ml)
Jan. 24	Defendant's Reply to Government's Petition for reh. with suggestion for reh. in banc, w/serv., filed. (ml)
Jan. 29	Letter dated Jan. 28, 1985, from Walter S. Batty, Jr., Esq., cnsl for appt., which has been rec'd for the info of the Court. (ml)
Feb. 8	Order (Aldisert, Ch.J., Seitz, Adams, Gibbons, Hunter, Weis, Garth, <i>Higginbotham</i> , Sloviter, Becker & Van Dusen, C.Js.) denying the petition for rehearing. Judge Hunter, Judge Garth, Judge Sloviter and Judge Becker would grant the petition for rehearing, filed. (ml)
Feb. 8	Order (Adams, <i>Higginbotham</i> & Van Dusen, C.Js.) amending the opinion, filed. (ml)
Feb. 15	Motion of government to stay mandate, w/serv., filed. (ml)
Feb. 25	Order (Higginbotham, C.J.) granting mot. to stay to and including April 9, 1985, filed. (ml)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 83-00108

Date Filed: _____

UNITED STATES OF AMERICA

v.

JOSEPH INADI

VIOLATIONS:

21 U.S.C. § 846 (Conspiracy to manufacture and distribute methamphetamine—1 Count) 21 U.S.C. § 843(b) (Using telephone to facilitate a drug felony—2 Counts) 18 U.S.C. § 1952 and 2(a) (Causing interstate travel to facilitate a drug transaction—1 Count) 21 U.S.C. § 841 (Distribution of methamphetamine—1 Count)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES:

From in or about August of 1979 to in or about June of 1980, at Philadelphia in the Eastern District of Pennsylvania and elsewhere,

JOSEPH INADI

defendant herein, knowingly and intentionally did unlawfully combine, conspire, confederate and agree with John Lazaro, Jr., Michael McKeon, William Levan and other persons known and unknown to this Grand Jury,

to manufacture and distribute methamphetamine, a Schedule II non-narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

It was a part of the plan and purpose of the conspiracy that Joseph Inadi would provide John Lazaro, Jr., with methamphetamine in order that John Lazaro might distribute it.

It was a further part of the plan and purpose of the conspiracy that William Levan would and did provide apparatus needed to manufacture the methamphetamine.

It was a further part of the plan and purpose of the conspiracy that Joseph Inadi would provide chemicals needed in the manufacture process and would receive, for distribution, the majority of the manufactured methamphetamine.

It was a further part of the plan and purpose of the conspiracy that Michael McKeon would and did assist William Levan in preparing the methamphetamine and in delivering unsolidified methamphetamine to Cape May County, New Jersey.

In violation of Title 21, United States Code, Section 846.

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

On or about May 23, 1980, at Philadelphia in the Eastern District of Pennsylvania, and elsewhere,

JOSEPH INADI

defendant herein, did knowingly and intentionally use a communication facility, that is, a telephone, in facilitating the distribution of a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), in that JOSEPH INADI used the telephone to discuss the distribution of methamphetamine with John Lazaro, Jr.

In violation of Title 21, United States Code, Section 843(b).

COUNT THREE

THE GRAND JURY FURTHER CHARGES:

On or about May 25, 1980, at Philadelphia in the Eastern District of Pennsylvania, and elsewhere,

JOSEPH INADI

defendant herein, did knowingly and intentionally use a communication facility, that is, a telephone, in facilitating the distribution of a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), in that JOSEPH INADI used the telephone to discuss the distribution of methamphetamine with John Lazaro, Jr.

In violation of Title 21, United States Code, Section 843(b).

COUNT FOUR

THE GRAND JURY FURTHER CHARGES:

On or about May 25, 1980, at Philadelphia in the Eastern District of Pennsylvania

JOSEPH INADI

defendant herein, did induce and cause John Lazaro, Jr. to travel in interstate commerce with intent to carry on an unlawful activity, that is, the distribution of a controlled substance.

In violation of Title 18, United States Code, Section 1952(a)(3) and Title 18, United States Code, Section 2(b).

COUNT FIVE

THE GRAND JURY FURTHER CHARGES:

On or about May 25, 1980, at Philadelphia in the Eastern District of Pennsylvania,

JOSEPH INADI

defendant herein, did knowingly and intentionally distribute approximately 14 grams of methamphetamine, a Schedule II non-narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL:

Foreman

PETER F. VAIRA
United States Attorney

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

* * * * *

[104] Q. During the course of your agreement with Mr. Inadi was it ever necessary for you to discuss business with him, that is illicit business, by telephone?

A. Yes.

MS. MAGUIGAN: I object. She is leading, Your Honor. I ask that you instruct her not to lead.

MRS. DAMIRGIAN: I think it calls for a yes or no answer, I am not sure.

THE COURT: It does suggest what the answer will be, but given the witness' prior testimony it's hardly leading and I will overrule your objection.

THE WITNESS: Yes.

BY MRS. DAMIRGIAN:

Q. What understanding, if any, did you have with Mr. Inadi concerning discussions of methamphetamine over the telephone?

A. Well, we wouldn't allude to it as methamphetamine. We would either call it suits of clothes, chain saws or chain saw oil.

Q. And specifically what is a suit of clothes when you are talking to Mr. Inadi in this context?

A. A pound of finished product, methamphetamine.

Q. Did you ever employ or hear him employ the term chain?

[105] A. Yes.

Q. Did that term have any particular significance?

A. Same thing.

Q. What about the term saws?

A. Same.

THE COURT: Pardon me one moment. When you say same, what do you mean by that?

THE WITNESS: Well, we called a pound or a pound of finished methamphetamine either a suit of clothes, a chain or a chain saw.

THE COURT: All right.

THE WITNESS: If we were talking about the P2P or the phenyl two propenol which is a catalyst, we talked about chain saw oil and I knew we were talking about oil.

BY MRS. DAMIRGIAN:

Q. Did you ever have a conversation with Joseph Inadi concerning Marianne and John Lazaro?

A. Yes.

Q. And when did that conversation take place?

A. I believe the later part of May, 1980.

Q. What caused the conversation concerning the Lazaros?

A. Joe said he had a problem; he had delivered a couple of ounces of meth to John and the police had stopped him or the agents had stopped him on the Boulevard somewhere.

[285] THE COURT: Are you talking about the identification of the voices or co-conspirators?

MS. MAGUIGAN: And in addition there are two issues there. One, they are in the position with this witness and I object to having this witness be the person to identify Lavan as the declarant. Then they have not met their burden showing he is—

THE COURT: I can voir dire this witness right now out of the hearing of the jury for his basis for identifying Lavan's voice. That is your problem, right?

MS. MAGUIGAN: There are two problems.

THE COURT: That's your initial problem?

MS. MAGUIGAN: That's one problem.

THE COURT: The other is whether they are co-conspirators and I have already ruled on that before we started trial, that I was not going to conduct a preliminary hearing on the matter, that I would hear it and that I would make findings after I heard the evidence and heard whether or not they go to the jury.

MS. MAGUIGAN: That's the rule, okay. Finally, sir, there was a confrontation clause objection that the burden the Government has in order to bring in these tapes and overcome their confrontation clause problems is to show, and following the discussion now in Ammar which relates back to Ohio versus Roberts, they must show the unavailability of [286] the declarant and two indicia of reliability in the use of the tapes and that's the separate indicia of 801(d)(2).

In Ammar and Ohio versus Roberts the court requires they make a showing of the unavailability of the declarant and the four indicia of reliability set forth in Ammar.

MRS. DAMIRGIAN: I don't have Ammar.

THE COURT: Are you going to use this witness to identify the voice of—

MRS. DAMIRGIAN: William Lavan's?

THE COURT: William Lavan.

MRS. DAMIRGIAN: If the Court is satisfied, otherwise I will call Agent Elwell so we don't have a problem with the voice identification.

THE COURT: Well, I assume you are going to ask this witness to tell us whose voice this is that said thus and so?

MRS. DAMIRGIAN: Yes, sir.

THE COURT: I don't know whether the witness is able to do that as to Lavan. I thought that he was, but maybe there is a question about it and if it's a question about it I would like to know if your offer of proof is that he has knowledge and a basis for making that identification, some conversations with Lavan which would permit him to make the identification. * * *

* * * * *

[292] THE COURT: I don't know what the situation is. I don't know what the situation is as to that witness and maybe Mrs. Damirgian can tell me.

MRS. DAMIRGIAN: Your Honor, it's John Lazaro's position that—well, his first position, his position at this point is that if he is called to testify that he will refuse to testify notwithstanding he has been made well aware that he will probably or could likely be given six months for contempt of Court and be held in violation of his parole by the State of New Jersey. He has advised me of that personally in the company of his wife.

THE COURT: Well, we may indeed require him to come. It seems to me that in order to resolve this question that you are better off putting on your evidence of unavailability than having to argue it later on.

MRS. DAMIRGIAN: Very well. We will bring Lavan and Lazaro.

THE COURT: Than have to argue it later on as to whether it is a requirement in this context.

MRS. DAMIRGIAN: Yes.

THE COURT: And certainly there are cases which perhaps suggest it may not be in the confrontation sense a requirement.

MRS. DAMIRGIAN: Is it my understanding that [293] before we can play the tapes though in which Inadi alone is speaking, may I suggest this to the Court then. Obviously—

THE COURT: I am going to permit you to play all the tapes based on your representations.

MRS. DAMIRGIAN: And then bring them in?

THE COURT: And your tying in that evidence at a later time, unless, as I have said, if Ms. Maguigan does not want us to bring these witnesses in. Obviously there are a lot of ways you can do it. You can bring the witness in, swear the witness and determine his unavailability. Maybe she would prefer that you not do it or that you do it. I don't care.

MS. MAGUIGAN: Your Honor, I am perfectly willing to talk with my client about it. Obviously it is a weighty matter; I am asking for some advice.

THE COURT: They may come in and decide they want to testify, I don't know.

MS. MAGUIGAN: Sure. I would like to know so I can have my conversation with my client. The Court is satisfied were Lazaro to appear and decline to testify that he was unavailable.

THE COURT: What I am saying is if they come in and claim their rights not to testify I would consider that unavailable. That puts on record at least one prong of why I would consider it. * * *

* * *

[408] THE COURT: Thank you, sir.

Do you have anything else to bring before the Court?

MRS. DAMIRGIAN: No, sir. We had asked John Lazaro to be here also, although we don't believe we have the same problem with him and apparently he had car problems so I would assume that the Court would just want to go ahead with the jury trial.

THE COURT: I will go ahead with the jury. If he arrives and you wish to call him I will hear him out of the presence of the jury.

Do you have any reason for wanting Mr. Lavan to be heard by the jury?

MS. MAGUIGAN: No, sir.

THE COURT: Fine, you are excused.

(Witness was excused).

MS. MAGUIGAN: Your Honor, I have one matter. Yesterday when I asked the Court for enforcement of the subpoenas which were served the Court directed me to prepare a written motion and order. I have done so. The original will be filed with the Court. I am serving a copy on the Government. If I may approach I have a copy for the Court.

THE COURT: Okay, fine. Does the Government wish to respond to this motion?

* * *

[443] Q. How many years have you been with DEA, Mr. Hershowitz?

A. Fifteen years.

Q. And during the course of that time have you been involved in investigations concerning methamphetamine?

A. Many.

Q. Have you actually been involved in investigations which included methamphetamine laboratories?

A. Yes, I have.

Q. And during that time have you been involved in court order wiretaps involving methamphetamine distribution or laboratories?

A. Yes.

Q. Have you also been involved in essentially monitored conversations which dealt with the manufacture or distribution of methamphetamine?

A. Yes, I have.

Q. Is it common practice for persons dealing in methamphetamine to refer to it by words other than methamphetamine?

MS. MAGUIGAN: Judge, before he answers, if I may, while I don't object to her offering questions to qualify the agent as someone with experience, I do object to her using the same form of leading questions at this juncture.

[444] THE COURT: I will overrule your objection because it doesn't suggest the answer to the present question, but if you are going to get into anything substantive do not lead, please.

THE WITNESS: Would you repeat that please?

MRS. DAMIRGIAN: The question was was it a common practice to refer to it by words other than methamphetamine?

THE WITNESS: As a matter of fact, it's rare or rarely would the actual word methamphetamine be used in those conversations.

BY MRS. DAMIRGIAN:

Q. What types of words have you heard used during the course of methamphetamine investigations?

A. Numerous, crank, speed, rabbit, referred to as clothes, suits, shirts; and there was an occasion, a wiretap, in which the term chain was in fact utilized previously; that was back in 1975 I believe, chain.

Q. But that was not related to this investigation?

A. Not at all.

Q. When you first heard the tape from Cape May County was there any question in your mind as to what the references were?

A. No question in my mind.

* * * * *

[574] THE COURT: In regard to the various tapes and transcripts at this time there is clearly at least a preponderance of the evidence to support a finding that the conspiracy alleged was actually formed and that Mr. Inadi was a member of that conspiracy.

The tapes and transcripts which the jury have heard today, there is a preponderance of the evidence to establish that the statements by co-conspirators were made in furtherance of the conspiracy and during the course of the conspiracy. As to Mr. Levan he has taken the witness stand and from his testimony I would find that he is actually unavailable to the Government or to defendant. As to Mrs. Lazaro and Mr. McKeon, of course they have testified in this matter, and as to Mr. Inadi's conversations they would be admissible as to Mr. Inadi's statements as statements by a party to the litigation and as to Mr. Lazaro as to statements by a co-conspirator.

Under the circumstances I do not believe that [575] there is any violation of any right of Mr. Inadi to confront the witnesses and therefore at this time I will admit all the tapes and transcripts which have been played to date and thus the Government has its exhibits 1 through 14 admitted.

(Government Exhibits 1 through 14 were received in evidence.)

THE COURT: The Government rests?

MRS. DAMIRGIAN: Yes, sir.

THE COURT: Do you have any motions?

MRS. DAMIRGIAN: No, sir.

THE COURT: All right, do you wish to produce evidence?

MS. MAGUIGAN: May I have a moment please, sir?

Your Honor, I understand that the court has ruled and I request leave to make certain specific objections with regard to the ruling on co-conspirators.

THE COURT: Very well.

* * * * *

SUPREME COURT OF THE UNITED STATES

No. 84-1580

UNITED STATES, PETITIONER

v.

JOSEPH INADI

Filed May 28, 1985

ORDER ALLOWING CERTIORARI

The petition herein for a writ of certiorari to the *United States Court of Appeals for the Third Circuit* is granted.